

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RODNEY L. EMIL,

Petitioner,

vs.

E.K. McDANIEL, *et al.*,

Respondents.

3:02-cv-00311-RLH-RAM

ORDER

This action is a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, by a Nevada state prisoner represented by counsel. Before the Court is respondents' motion to dismiss, or in the alternative, motion for a more definite statement. (ECF No. 52).

I. Recent Procedural History

This action was dismissed without prejudice, and the case closed administratively, pursuant to a minute order entered August 29, 2007. (ECF No. 41). The dismissal resulted from petitioner's decision to return to state court to exhaust his state-court remedies with respect to certain of his grounds for relief. By order filed December 17, 2010, the Court granted petitioner's motion to re-open the case and directed petitioner to file an amended petition. (ECF No. 46). On January 27,

1 2011, through counsel, petitioner filed a third amended petition. (ECF No. 49). Respondents have
2 filed the instant motion to dismiss, or in the alternative, motion for a more definite statement. (ECF
3 No. 52). Petitioner filed an opposition to the motion. (ECF No. 62). Respondents did not exercise
4 their right to file a reply.

5 **II. Discussion**

6 Respondents have filed a motion to dismiss, or in the alternative, motion for a more definite
7 statement regarding the third amended petition. “A party may move for a more definite statement of
8 a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the
9 party cannot reasonably prepare a response.” Fed. R. Civ. P. 12(e). Motions for more definite
10 statement are disfavored, and their disposition is within the Court’s discretion. *See generally* 5A, C.
11 Wright and A. Miller, *Federal Practice and Procedure: Civil 2d*, § 1377.

12 Respondents first argue that the third amended petition fails to properly allege exhaustion as
13 to each claim in the petition. In the opposition papers, petitioner has presented an exhaustion chart,
14 at Exhibit F, which lists every ground in the third amended petition and indicates where in the state
15 court record that each claim was presented to the state courts. (ECF No. 61-7, Exhibit F to
16 Petitioner’s Opposition). The Court accepts the exhaustion chart as sufficient exhaustion
17 information for the third amended petition. To this end, the exhaustion chart at ECF No. 61-7
18 (Exhibit F to Petitioner’s Opposition) will be construed as part of the third amended petition.
19 Respondents’ motion to dismiss for failure to allege exhaustion is denied.

20 Respondents’ other argument is that the third amended petition contains “indecipherable
21 claims.” (ECF No. 52, at pp. 3-6). Respondents argue that the third amended petition has grounds
22 that contain multiple legal theories and that the grounds cannot be analyzed for exhaustion or
23 answered on the merits. (*Id.*). The Court disagrees. To the extent that any given ground in the third
24 amended petition contains multiple legal theories, the grounds can be divided into sub-claims and
25 analyzed individually. The Court observes that the third amended petition already contains sub-
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1 claims divided into sections under each main ground. (ECF No. 49). The Court further observes
2 that the third amended petition presents grounds similar, if not exactly the same grounds, as were
3 presented in the first and second amended petitions, as well as the state court petition. The Court
4 does not deem the third amended petition to be so vague or ambiguous that the respondents cannot
5 reasonably prepare an answer. Respondents' motion to dismiss, or in the alternative, motion for a
6 more definite statement, is denied. Respondents will be required to file an answer. No further
7 motions to dismiss will be permitted. If respondents have any procedural arguments, such arguments
8 must be set forth in the answer, in addition to a substantive discussion on the merits of all grounds
9 set forth in the third amended petition.

10 **III. Conclusion**

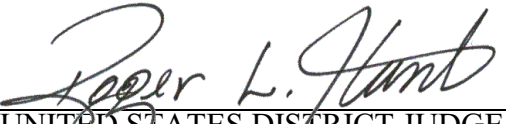
11 **IT IS THEREFORE ORDERED** that respondents' motion to dismiss, or in the alternative,
12 motion for a more definite statement (ECF No. 52) is **DENIED**.

13 **IT IS FURTHER ORDERED** that, within **forty-five (45) days from the date of this**
14 **order**, respondents **SHALL FILE AN ANSWER** to the third amended petition (ECF No. 49). The
15 answer shall substantively address the merits of all grounds and sub-parts of the third amended
16 petition, as well as all procedural grounds that respondents may wish the Court to consider. **No**
17 **further motions to dismiss will be entertained**. In filing the answer, respondents shall comply
18 with the requirements of Rule 5 of the Rules Governing Proceedings in the United States District
19 Courts under 28 U.S.C. §2254.

20 **IT IS FURTHER ORDERED** that petitioner **SHALL**, within **forty-five (45) days from the**
21 **date of this order**, supply this Court with a courtesy (paper) copy of all exhibits presented in support
22 of the third amended petition. Courtesy copies shall be mailed to the Clerk of Court, 400 S. Virginia
23 St., Reno, NV, 89501, and directed to the attention of "Staff Attorney" on the outside of the mailing
24 address label. Moreover, in the future, all parties shall provide courtesy copies of all exhibits
25 submitted to the Court in this case, in the manner described above.

1 **IT IS FURTHER ORDERED** that petitioner shall file his reply to the answer not later than
2 **forty-five (45) days** after being served with the answer.

3 Dated this 10th day of August, 2011.

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7 UNITED STATES DISTRICT JUDGE
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